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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2007

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN
and
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

C.M.A.(NPD) No.26 of 2002

Jayakumar .. Appellant

versus

Vijaya Rani .. Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984, against the order and decreetal order dated 12.7.2001 made in F.C.O.P.No.659 of 1996 on the file of the II Additional Family Court, Chennai.

For appellant : Mr.K.Surendranath

For respondent : Mr.K.Veeramani

JUDGMENT

(Judgment of the Court was delivered by CHITRA VENKATARAMAN,J.)

This Civil Miscellaneous Appeal is by the petitioner husband against the order of the II Additional Family Court, Chennai, dated 12.7.2001 in F.C.O.P.No.659 of 1996, rejecting the prayer for dissolution of marriage, under Section 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955.

2. The appellant husband sought for dissolution of the marriage on the ground of cruelty and desertion. The II Additional Family Court, Chennai, dismissed the plea for dissolution of the marriage on the ground that the allegations were not proved. Aggrieved by the said order, the petitioner husband has come on appeal questioning the said order.

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3. Learned counsel appearing for the appellant pointed out that the marriage between the appellant and the respondent took place on 4.9.1989 according to Hindu rites and customs. It is

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stated that the respondent's brother is a Police Constable. When the appellant and his mother went to see the child delivered, they were abused by the brother of the respondent herein. It is also stated that one of the brothers of the respondent, Yuvaraj, took out a knife to stab the appellant and that the appellant, his mother and his brother were insulted and abused. In spite of repeated steps to bring about settlement, there was no improvement in restoring the matrimonial ties.

4. It is stated that the respondent terminated her second pregnancy which caused great mental agony to the appellant herein. It is further alleged that even during her stay, which was of a brief spell, she created nuisance threatening that she would consume poison. It is alleged that the respondent's mother took her to her house in the year 1994. Thereafter, she made a complaint before the All Women Police Station, Thousand Lights. The appellant herein and his mother were taken to the police station at 6.00 a.m. and kept in lock-up and were forced to spend the festival day in the lock-up. It is also alleged that the respondent indulged in character assassination before the police and with the help of her brother who is a Police Constable, the appellant herein was threatened. When the appellant sent a notice on 29.3.1995, there was no response from the respondent. Considering the continued mental agony, the appellant had gone in for a petition seeking dissolution of the marriage.

5. The respondent herein denied the allegation of cruelty. She stated that the petitioner's sister and mother used force on her and the baby and that she was abused. The petitioner's mother and sister forcibly removed the gold bangles owned by the respondent and pledged the same in a pawn shop. The respondent states that she was driven out of the matrimonial home by the appellant and his family for dowry. Unable to bear the torture and humiliation, she gave a complaint to the All Women Police Station, Thousand Lights. On an undertaking given by the appellant and his family members that they would treat the respondent properly, they were let off. The sum and substance of the contention of the respondent is that the respondent never refused to live with the appellant and that she is willing to live with the petitioner/appellant with the hope that the appellant would mend his ways to take care of her and the children.

6. By order dated order dated 12.7.2001, the II Additional Family Court, Chennai, rejected the petition by formulating the question as to whether the respondent treated the appellant herein with cruelty and whether the respondent deserted the appellant herein without sufficient cause. Going by the evidence, ultimately, the Court below came to the conclusion that the appellant herein was not treated with cruelty by the respondent and that she had never deserted the appellant.

7. Aggrieved of the said order, the husband has come on appeal questioning the correctness of the findings of the Family Court.

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8. Learned counsel appearing for the appellant, taking us through the evidence and the documents marked, pointed out that the Court below failed to advert to the fact that the respondent filed a complaint against the appellant and his family members regarding the alleged dowry harassment long after she left the matrimonial home. She even filed a petition for maintenance later. It was withdrawn for some reasons which were not disclosed. He also alleged that the respondent's brother, misusing his position as a Police Constable, abused the appellant when they visited the respondent. Learned counsel appearing for the appellant submitted that the Court below failed to see that the appellant had to go in for anticipatory bail and that the Court below overlooked this fact. On the contrary, it disbelieved the case of the appellant as regards the false complaint made by the respondent and her family members. Learned counsel appearing for the appellant further pointed out that the Court below, for no reason, rejected the case of the petitioner/appellant, but on the contrary, accepted the plea of the respondent without any evidence.

9. Learned counsel appearing for the respondent, however, supported the order of the Family Court and submitted that in the absence of any convincing evidence let in, the Family Court rightly rejected the plea on cruelty.

10. Heard the learned counsel on both sides and perused the records.

11. A perusal of the deposition by the parties herein shows that the respondent conceived twice. The delivery of the first child was taken care of by the appellant herein. It is stated by the appellant herein that on 3.4.1993, the respondent took the children and returned back to her mother's place. After nearly eight months, she made a complaint before the All Women Police Station, alleging dowry demand. It is a matter of fact that the respondent, after returning to her mother's place in 1993, did not evince any interest to return back to the appellant herein. In fact, no reply was given to the notice sent by the appellant herein on 29.3.1995. In the evidence, the appellant also stated that he is not agreeable to live with the respondent, considering her past conduct. The respondent, however, deposed to express her willingness to live with the husband. She stated that the appellant's mother and sister demanded dowry and prevented her from living with her husband. Although the respondent stated that one Venkatesan who happened to be the appellant's maternal uncle, brought her to her mother's place, yet, the said Venkatesan was not examined to support her cause. She admitted that she made a complaint before the All Women Police Station, Thousand Lights. She also admitted that she visited her husband in the depot. The Court below, however, pointed out that no reliance could be placed on the evidence of the appellant who deposed as P.W.1 and also refused to accept the allegation that the respondent's brother attempted to stab him as nothing but a figment of imagination.

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12. An analysis of the evidence of both these witnesses who happen to be the petitioner and the respondent in the proceedings before the Court below, takes us nowhere as to their case. These evidence are nothing but interested testimony given to suit each other's cause. The appellant herein is working in the State Transport Corporation as a Bus Conductor. He is a graduate. Considering the kind of evidence let in and the facts leading to the filing of the petition, this Court summoned both the parties to appear before this Court to attempt on a settlement to bring about a restoration of the matrimonial ties and to restore confidence among these two parties. It may be seen that the matter was referred to the Tamil Nadu Mediation and Conciliation Centre, High Court, Madras. A report has been received from the Tamil Nadu Mediation and Conciliation Centre dated 4.1.2007, wherein, it is stated as follows:

> " Husband is not willing to join her. But the wife wants to join him. Both are firm on their stand. Hence, no settlement possible. "

13. Leaving aside the said report, this Court again attempted to bring about a settlement between the parties. The matter was adjourned several times to enable the parties to think over and return with a positive solution of re-union. However, the appellant herein expressed his inability to take the respondent back into his home. He stated that the respondent made wild allegations against him and his family and made a false complaint that the appellant and his relatives demanded dowry; that his aged mother was kept in police custody for a whole day. Considering the attitude of the respondent and the wide gap between them, it is not possible to settle for a happy home.

14. Hence, going by the circumstances, taking note of the attitude of the parties, we do not find any useful purpose would be served by prolonging this matter. Even though the evidence lead us nowhere, the efforts to bring to an end the differences remaining unresolved, even otherwise, we do not find any justifiable reason to accept the plea of the respondent to restore her to the matrimonial home. We are of the view that this is a case where the ties are broken irretrievably and there is no possibility of bringing the parties together.

15. In this connection, in matters relating to matrimonial disharmony leading to filing of divorce petition where the parties have been living separately for a long number of years with no possibility of reunion, indicating the marriage irretrievably broken, the decision of the Supreme Court reported in (2006) 4 SCC 558 (NAVEEN KOHLI Vs. NEELU KOHLI) and (2007) 4 SCC 511 (SAMAR GHOSH Vs. JAYA GHOSH) need to be noted.

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16. In the decision reported in (2006) 4 SCC 558 (NAVEEN KOHLI Vs. NEELU KOHLI), where both the spouses had been living separately for a fairly long number of years and could not

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reconcile themselves to live together forgetting the past, the Apex Court confirmed the order of the Family Court to grant the decree of divorce. Though irretrievable marriage is not a ground for dissolution of marriage under the Hindu Marriage Act, 1955, the Apex Court held that if after an endeavour to reconcile the parties the breakdown is irreparable, then divorce should not be withheld. It further held that it would be unrealistic for the law not to take notice of that fact and it would be harmful to the society and injurious to the interest of the parties. Where there being a long period of continuous separation, it may fairly be surmised that the irretrievable bond is beyond repair. Marriage becomes a fiction, though supported by a legal tie. By refusing to sever that tie, the law in such cases does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of parties. Taking note of the fact that the parties had been living separately for more than ten years and the number of proceedings initiated by one party on the other, the Apex Court found that the marriage between the parties was only in name. The marriage has been wrecked beyond the hope of salvage, public interest and interest of all concerned lies in the recognition of the fact and to declare defunct de jure what is already defunct de facto. To keep the sham is obviously conducive to immorality and potentially more prejudicial to the public interest than a dissolution of the marriage bond.

17. The Apex Court, once again, in the decision reported in (2007) 4 SCC 511 (SAMAR GHOSH Vs. JAYA GHOSH), had an occasion to consider a similar situation. Referring to various case laws on the subject including the decision reported in (2006) 4 SCC 558 (NAVEEN KOHLI Vs. NEELU KOHLI) the Supreme Court held that "under the breakdown theory, divorce should be seen as a solution and an escape route out of a difficult situation. Such divorce is unconcerned with the wrongs of the past, but is concerned with bringing the parties and the children to terms with the new situation and developments by working out the most satisfactory basis upon which they may regulate their relationship in the changed circumstances."

18. As to the various instances of mental cruelty, the Apex Court further observed that there can never be any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters. Yet, the Apex Court, by way of illustration, listed out the instances of mental cruelty as follows:

> "(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.
>
> (ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.
>
> (iii) Mere coldness or lack of affection

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cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilisation without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

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(xii) Unilateral decision of refusal to have

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intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty. "

19. Taking note of all these circumstances and the fact that the parties were admittedly living separately for more than 16½ years, the Apex Court felt that the irresistible conclusion would be that the matrimonial tie had ruptured beyond repair and hence, granted the decree of divorce.

20. Applying the said decision to the facts of the case herein on the admitted fact that the parties have been living separate eversince 1993, this Court feels that there is no other option except to come to the irresistible conclusion that the matrimonial tie had ruptured beyond repair. Hence, applying the decision of the Apex Court referred to above to the facts of this case and taking note of the attempts made by this Court not being successful, we allow the appeal, thereby grant the decree of divorce and dissolution of the marriage held on 4.9.1989, subject to the following conditions:

The appellant states that he has been maintaining the educational expenses and other medical expenses of the minor children. Subject to the appellant herein continuing to meet the educational and other medical expenses of the minor children and further depositing a sum of Rs.2,00,000/- (Rupees two lakhs only) in the name of the mother and the minor children within a period of six weeks from the date of receipt of a copy of this order, the order passed by the Family Court shall stand set aside. The appellant herein shall continue to meet the educational and other medical expenses of the minor children without any default. In the event of there being any default in any one of the clauses stated above, the order of the Family Court shall stand confirmed. The respondent wife is permitted to withdraw the interest accruing on the fixed deposit to be kept in a nationalised bank, once in six months.

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The appeal stands disposed of accordingly. No costs. Connected C.M.P.No. 1618 of 2007 is closed.

Ksv

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

The II Additional Judge
Family Court, Chennai.

- 1 cc to Mr. K. Veeramani, Advocate SR No. 65221
- 1 cc to Mr. K. Surendranath, Advocate SR No. 64919

Copy to:-

The Section Officer, VR Section, High Court, Madras.

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VSV(CO)
SR/29.11.2007

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